

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13
Case No.04-44736 RJK

Bruce Martin Rannow,

Debtor.

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY

1. TopLine Federal Credit Union ("Movant"), a secured creditor of the Debtor herein, by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 2:00 o'clock p.m., on October 14, 2004, before The Honorable Robert J. Kressel, Courtroom No. 8, United States Courthouse, 300 South Fourth Street, Minneapolis Minnesota, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than October 7, 2004, which is seven days before the time set for the hearing (including Saturdays, Sundays and holidays), or filed and served by mail not later than October 4, 2004, which is ten days before the date set for the hearing (including Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rules 9013-2 and 4001-1 and Movant requests relief from the automatic stay of 11 U.S.C. § 362(a) with respect to certain personal property subject to Movant's valid security interest.

5. This case was filed as a voluntary case under Chapter 13 of the United States Bankruptcy Code, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Local Rule 1070-1, Fed. R. Bankr. P. 5005, 11 U.S.C. § 362(d) and applicable rules. This is a core proceeding.

6. Movant holds a valid, perfected security interest in a Dodge Ram 1500 Pickup, VIN 1D7HU16D74J167775 (the "Vehicle").

7. A copy of Movant's Installment Sale Contract (the "Contract") is attached hereto as Exhibit A and incorporated herein by reference.

8. Payments due under the terms of the Contract have not been made by the Debtor. The fair market value of the Vehicle, on information and belief, is approximately \$27,700. Debtor is delinquent under the terms of the Contract for the payment due for September 2004 in the total amount of \$557.07, plus late charges, accruing interest, fees and costs.

9. Movant's security is depreciating in that the Vehicle is continuing to be utilized by the Debtor, subjecting the same to wear, while failing to make payments. Movant does not have, and has not been offered, adequate protection of its interest in the Vehicle.

10. The failure of the Debtor to make payments or otherwise provide Movant with adequate protection of its interest in the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1), entitling Movant to relief from the stay.

9. If testimony is necessary as to any facts relevant to this motion, Kirstin Bethke or Denise Karngbaye of Movant, 9353 Jefferson Highway, Maple Grove, Minnesota 55369, will testify on behalf of Movant.

WHEREFORE, Movant, respectfully moves the Court for an order modifying the automatic stay of section 362(a) of the Bankruptcy Code and authorizing Movant to foreclose its security interest in the Vehicle and for such other relief as may be just and equitable.

Date: September 16, 2004.

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen

Thomas J. Lallier (#163041)

Ruth E. Honkanen (#175924)

Attorneys for Movant

250 Marquette Avenue, Suite 1200

Minneapolis, MN 55401

(612) 338-8788

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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MEMORANDUM IN SUPPORT
OF MOTION

TopLine Federal Credit Union ("Movant") submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a perfected security interest in a Dodge Ram 1500 Pickup (the "Vehicle"). The vehicle subject to Movant's security interest is depreciating with use. Debtor is delinquent with respect to payments due under the contract with Movant.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). Payments have not been made as required by the contract and Movant has not been provided with adequate protection of its interest in the Vehicle. Such failure constitutes cause, within the meaning of § 362(d)(1), entitling Movant to relief from the stay. United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

The Debtor has proposed a chapter 13 plan which does not adequately protect the interests of Movant. The chapter 13 plan limits the secured claim to \$25,000.00 and does not commence payments until the third month of the plan. The payments are not equal to the continued depreciation in the vehicle during the term of the plan.

CONCLUSION

For all the reasons set forth herein, Movant is entitled to an order terminating the automatic stay of 11 U.S.C. § 362(a) and authorizing it to take possession of and foreclose its security interest in the Vehicle.

Dated: September 16, 2004.

Respectfully submitted,

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen

Thomas J. Lallier (#163041)

Ruth E. Honkanen (#175924)

Attorneys for Movant

250 Marquette Avenue, Suite 1200

Minneapolis, MN 55401

(612) 338-8788

09/16/2004 THU 8:33 FAX 6123499859 foley & mansfield

005/005

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re;

Chapter 13

Case No.04-44736 RJK

Bruce Martin Rannow,

Debtor.

VERIFICATION

I, Denise Karmbaye, for TopLine Federal Credit Union declare, under penalty of perjury, that
the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on: 09-16-04Signed: 

Denise Karmbaye

516 756 - 211

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT		Seller	Buyer
No.		WALSER BLOOMINGTON DODGE	BRUCE MARTIN HANNOV
Date	MARCH 31st, 2004	3011 PENN AVE. SOUTH BLOOMINGTON, MN 55431 "We" and "us" mean the Seller above, its successors and assigns.	6018 PORTLAND AVE S MINNEAPOLIS, MN 55417 "You" and "your" mean each Buyer above, and guarantor, jointly and individually.

SALE: You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Year 2004 VIN 1D7HUL6D74J167775 Other:
Motor Vehicle Make DODGE TRUCK Lic. No./Year
Purchased Model RAM PICKUP ☒ New ☐ Used

Description of
Trade-In 2001 CHRYSLER PT CRUISER 3C8FY4BB31T543325

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 28135.87, plus finance charges accruing on the unpaid balance at the rate of 10.08 % per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

☐ **LOAN ADMINISTRATION FEE:** You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be ☐ paid in cash. ☐ paid pro rata over the contract term. ☐ withheld from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
10.08 %	\$ 8630.75	\$ 28135.87	\$ 36766.62	\$ 1027.49 \$ 37794.11

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
65	\$57.07	MONTHLY, BEGINNING: APRIL 30th, 2004
1	\$57.07	FINAL PAYMENT DUE ON: SEPTEMBER 30th, 2009

Security: You are giving a security interest in the Motor Vehicle purchased.

☒ **Late Charge:** If a payment is more than 15 days late, you will be charged \$15. ☒ This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.59.

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.

☐ If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life: Insured

☐ Single ☐ Joint Prem. \$ N/A Term N/A

Credit Disability: Insured

☐ Single ☐ Joint Prem. \$ N/A Term N/A

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

Buyer d/o/b Buyer d/o/b

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ N/A. If you got insurance from or through us you will pay \$ N/A for N/A of coverage.

This premium is calculated as follows:

☐ \$ N/A (Deductible, Collision Coverage \$ N/A)
☐ \$ N/A (Deductible, Comprehensive Cov. \$ N/A)
☐ Fire-Theft and Combined Additional Coverage \$ N/A
☐ \$ N/A

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 903.11) \$ 28297.11
Service Contract, Paid to: \$ N/A
Cash Price \$ 28297.11

Manufacturer's Rebate \$ 3500.00
Cash Down Payment \$ N/A
Deferred Down Payment \$ N/A
a. Total Cash/Rebate Down \$ 3500.00
b. Trade-In Allowance \$ 10000.00
c. Less: Amount owing \$ 12472.51
Paid to: TOPLINE FEDERAL CREDIT UNION
d. Net Trade-In (b. minus c.) \$ 2472.51
e. Net Cash/Trade-In (a. plus d.) \$ 1027.49

Down Payment (e.; disclose as \$0 if negative) \$ 1027.49
Unpaid Balance of Cash Price \$ 27269.62

Paid to Public Officials - Filing Fees \$ 371.25
Insurance Premiums \$ N/A
Amount to Finance line e. (if e. is negative) \$ N/A
To: STATE NATIONAL \$ 445.00
To: WALSER BLOOMINGTON DODGE \$ 50.00
To: \$ N/A
To: \$ N/A
Total Other Charges/Amounts Pd. to Others \$ 860.25
Less: Prepaid Finance Charges \$ N/A
Amount Financed \$ 28135.87

*We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a

EXHIBIT

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accessories, equipment, and equipment placed in or on the vehicle, together called property, and proceeds of the property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 28135.87 plus finance charges accruing on the unpaid balance at the rate of 10.08 % per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

☐ **LOAN ADMINISTRATION FEE:** You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be ☐ paid in cash. ☐ paid pro rata over the contract term. ☐ withheld from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
10.08 %	\$ 8630.75	\$ 28135.87	\$ 36766.62	\$ 37794.11

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
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1	\$57.07	FINAL PAYMENT DUE ON: SEPTEMBER 30TH, 2009

Security: You are giving a security interest in the Motor Vehicle purchased.

☒ **Late Charge:** If a payment is more than 15 days late, you will be charged \$15. This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.59.

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.

☐ If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life: Insured ☐ Single ☐ Joint Prem. \$ N/A Term N/A

Credit Disability: Insured ☐ Single ☐ Joint Prem. \$ N/A Term N/A

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

Buyer d/b/a Buyer d/b/a

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any Insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ N/A. If you get insurance from or through us you will pay \$ N/A for N/A of coverage.

This premium is calculated as follows:

☐ \$ N/A Deductible, Collision Coverage \$ N/A

☐ \$ N/A Deductible, Comprehensive Cov. \$ N/A

☐ Fire-Theft and Combined Additional Coverage \$ N/A

☐ \$ N/A

Liability Insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

☐ **MOTOR VEHICLE SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover N/A

This Service Contract will be in effect for N/A

ASSIGNMENT: This Contract and Security Agreement is assigned to TOPLINE FEDERAL CREDIT UNION (952) 391-9494

☐ Assignee, phone N/A. This assignment is made ☐ under the terms of a separate agreement. ☐ under the terms of the ASSIGNMENT BY SELLER on page 2. ☐ This assignment is made with recourse.

Seller: By [Signature] Date 03/31/2004

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 903.11) \$ 28297.11

Service Contract, Paid to: N/A

Cash Price \$ 28297.11

Manufacturer's Rebate \$ 3500.00

Cash Down Payment \$ N/A

Deferred Down Payment \$ N/A

a. Total Cash/Rebate Down \$ 3500.00

b. Trade-In Allowance \$ 10000.00

c. Less: Amount owing \$ 12472.51

Paid to: TOPLINE FEDERAL CREDIT UNION

d. Net Trade-In (b. minus c.) \$ -2472.51

e. Net Cash/Trade-In (a. plus d.) \$ 1027.49

Down Payment (e.; disclose as \$0 if negative) \$ 1027.49

Unpaid Balance of Cash Price \$ 27269.62

Paid to Public Officials - Filing Fees \$ 311.25

Insurance Premiums* \$ N/A

Amount to Finance line e. (if e. is negative) \$ N/A

To: STATE NATIONAL \$ 445.00

To: WALKER BLOOMINGTON DODGE \$ 50.00

To: N/A \$ N/A

To: N/A \$ N/A

Total Other Charges/Amounts Pd. to Others \$ 866.25

Less: Prepaid Finance Charges \$ N/A

Amount Financed \$ 28135.87

*We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer: [Signature] 03/31/2004

Signature BRUCE MARTIN RANNO Date

Signature Date

Seller: By [Signature] (page 1 of 2)

Unsworn Affidavit of Service

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Jacquelyn J. LaVaque, declare under penalty of perjury that on September 16, 2004 , I mailed copies of the attached **Notice of Hearing and Motion for Relief From Stay, Memorandum of Law in Support of Motion, and proposed Order** by first class mail, postage prepaid, to each entity named below at the address stated below for each entity:

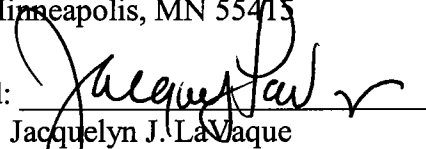
Bruce M. Rannow
6048 Portland Avenue S.
Minneapolis, MN 55417

Jasmine Z. Keller
Chapter 13 Trustee
12 South Sixth St. #310
Minneapolis, MN 55402

Executed on: September 16, 2004

Curtis K. Walker, Esq.
4356 Nicollet Avenue S.
Minneapolis, MN 55409

U.S. Trustee
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Signed: 
Jacquelyn J. LaVaque
Foley & Mansfield, P.L.L.P.
250 Marquette Avenue
Suite 1200
Minneapolis, MN 55401

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13
Case No. 04-44736 RJK

Bruce Martin Rannow,

Debtor.

ORDER FOR RELIEF
FROM STAY

The above-entitled matter came before the Court for hearing on the motion of TopLine Federal Credit Union ("Movant") seeking relief from the automatic stay of 11 U.S.C. 362(a) of the Bankruptcy Code. Appearances were noted in the Court's record. The Standing Chapter 13 Trustee submitted a report and recommendation in response to the motion. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Movant to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362(a) of the Bankruptcy Code is immediately terminated as to Movant, and Movant is [authorized to enforce its security interest as provided by contract and state law in the subject:](#)

Dodge Ram 1500 Pickup, VIN 1D7HU16D74J167775

Notwithstanding Fed. R. Bankr. 4001(a)(3), this order is effective immediately.

Dated: _____

United States Bankruptcy Judge